

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

**DAVID JELLISON,  
Plaintiff,**

**v.**

**STATE FARM LLOYDS,  
Defendant.**

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**CIVIL ACTION NO. 1:15-cv-1054**

**NOTICE OF REMOVAL OF ACTION  
UNDER 28 U.S.C. § 1441(b) (DIVERSITY)**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Defendant State Farm Lloyds (“Defendant”) and hereby petitions this Court pursuant to 28 U.S.C. §§ 1332, 1441(b), and 1446 for removal, on the basis of diversity of citizenship jurisdiction, to the United States District Court for the Western District of Texas, Austin Division, of the action numbered and styled Cause No. 15-2102; *David Jellison v. State Farm Lloyds*, in the 274<sup>th</sup> Judicial District Court of Hays County, Texas (the “State Court case”), and in support thereof would respectfully show this Court as follows:

**I. FACTS**

1. Plaintiff filed his Original Petition (“Petition”) in the State Court case on October 12, 2015. A true and correct copy of the Original Petition is attached hereto as part of Exhibit A. In his Original Petition, Plaintiff has asserted claims for breach of duty of good faith and fair dealing, insurance code violations, DTPA violations, negligence/negligent misrepresentation. Plaintiff seeks treble damages and attorneys fees pursuant to statute.

2. Plaintiff served Defendant through its registered agent with citation and a copy of

his Petition in the State Court case on October 22, 2015. This Notice of Removal is filed within thirty (30) days of service of the Petition, in compliance with 28 U.S.C. § 1446(b).

3. Plaintiff is a citizen and resident of the State of Texas.

4. Defendant State Farm Lloyds is an unincorporated association of underwriters and a citizen of Illinois.

## **II. AMOUNT IN CONTROVERSY**

5. Plaintiff is seeking damages in excess of \$75,000.00. On January 7, 2015 Mr. Jellison demanded a total of \$55,378.37 to settle his claim. His demand letter set forth \$38,624.21 in actual damages, \$13,833.68 in attorneys fees and \$6,960.48 in statutory penalty interest. *See* Exh. "A." The letter concludes by stating "should this claim result in litigation, my client will seek additional damages under the Insurance Code that will greatly increase the insurance company's exposure." *See* Exh. "A."

6. The additional damages and attorneys fees sought by Plaintiff in his lawsuit are considered in determining the amount in controversy:

Defendant here has shown from allegations in Plaintiff's Original Complaint that it is highly likely that the amount in controversy exceeds the \$75,000 requirement. Plaintiff has expressly sought to recover actual damages from the \$35,000 life insurance policy, plus treble damages associated with her DTPA claim, attorney's fees, and costs. Included in the amount of controversy are penalties, statutory damages, punitive damages, potential attorney's fees, and treble damages under the DTPA and the Texas Insurance Code.

*Coburn v. Am. Gen. Life & Acc. Ins. Co.*, 2013 WL 2289937, at \*2 (S.D. Tex. May 22, 2013) *citing* *St. Paul Reinsurance Co. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998).

## **III. COMPLETE DIVERSITY EXISTS**

7. This action is a civil action which may be removed to this Court by Defendant pursuant to the provisions of 28 U.S.C. §§ 1441(b) and 1332(a) in that it is between citizens of

different states and it is a civil action wherein the matter in controversy exceeds the sum of \$75,000.00, exclusive of interests and costs.

#### **IV. PROCEDURAL REQUIREMENTS**

8. By virtue of filing this Notice of Removal, Defendant does not waive its right to assert any motions to dismiss, including Rule 12 motions permitted by the Federal Rules of Civil Procedure.

9. All of the papers on file in the State Court case at the time of removal are attached hereto as Exhibit A. Those papers include the citation, Plaintiff's Original Petition, the district court docket sheet, and all answers on file.

10. Pursuant to 28 U.S.C. § 1446(d), written notice of filing of this Notice will be given to all adverse parties promptly after the filing of this Notice.

11. Pursuant to 28 U.S.C. § 1446(d), a true and correct copy of this Notice will be filed with the District Clerk of Hays County, Texas promptly after the filing of this Notice.

WHEREFORE, PREMISES CONSIDERED, Defendant State Farm Lloyds requests that this action be removed from the 274<sup>th</sup> Judicial District Court of Hays County, Texas to the United States District Court for the Western District of Texas, Austin Division, and that this Court enter such further orders as may be necessary and appropriate.

Respectfully submitted,

SKELTON & WOODY  
248 Addie Roy Rd, Suite B-302  
Austin, Texas 78746  
Telephone: (512) 651-7000  
Facsimile: (512) 651-7001

By: /s/ Edward F. Kaye  
J. Hampton Skelton  
State Bar No. 18457700  
[hskelton@skeltonwoody.com](mailto:hskelton@skeltonwoody.com)  
Edward F. Kaye  
State Bar No. 24012942  
[ekaye@skeltonwoody.com](mailto:ekaye@skeltonwoody.com)

ATTORNEYS FOR DEFENDANT

**CERTIFICATE OF SERVICE**

I hereby certify that on this 20<sup>th</sup> day of November, 2015, I am electronically filing the foregoing with the Clerk of the Court using the Case Management/Electronic Case Files ("CM/ECF") system, and I hereby certify that I have mailed by certified mail, return receipt requested the document to the following non-CM/ECF participant:

David C. Wenholtz  
13501 Galleria Circle  
Suite W270  
Bee Cave, Texas 78738  
Fax: (512) 478-3625

/s/ Edward F. Kaye  
Edward F. Kaye